

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA (PITTSBURGH)**

JOSHUA PROLENSKI and  
DENNIS PACELEY, on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

v.

TRANSTAR, LLC,  
GARY RAILWAY COMPANY, and  
UNION RAILROAD COMPANY, LLC,

Defendants.

**Civil No. 2:21-cv-00545-WSH**

Related case: 2:20-cv-00254-WSH  
(closed)

U.S. District Judge W. Scott Hardy

ELECTRONICALLY FILED

**DEFENDANTS'  
MOTION TO DISMISS  
PLAINTIFFS' SECOND  
AMENDED COMPLAINT**

Filed on behalf of Defendants  
Transtar, LLC, Gary Railway Company,  
LLC, and Union Railroad Company, LLC

Counsel of Record for these Parties:

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Defendants Transtar, LLC (“Transtar”), Gary Railway Company, LLC (“GRC”), and Union Railroad Company, LLC (“URR”) (collectively, the “Defendants”), by and through their counsel, hereby move to dismiss, and seek dismissal of, the second amended complaint filed in this case on May 30, 2023 (Doc. No. 52, “Second Amended Complaint” or “2nd A.C.”). This Motion is made pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(6), and 12(f) (alternate motion to strike). In support hereof, Defendants further state as follows:

1. Plaintiffs' entire Second Amended Complaint against Defendants should be dismissed on multiple, independent grounds.
2. **First**, as a threshold matter of the Court's subject matter jurisdiction, all claims against Defendants are entirely precluded by the Railway Labor Act, 45 U.S.C. § 151, *et seq.* ("RLA"), and therefore must be dismissed under Fed. R. Civ. P. 12(b)(1). Plaintiffs are attempting

to litigate their arbitrable disciplinary terminations, demerits amounts that may be adjusted via arbitration, and collectively-bargained-for last chance agreements. RLA preclusion is a dispositive threshold issue.

3. **Second**, Plaintiffs' conclusory ERISA claims should be dismissed in their entirety against all Defendants under Rule 12(b)(6) for failure to state any factually-supported claims. Plaintiffs rely upon mere conclusory allegations that a "scheme" existed, with no factual support. Plaintiffs additionally plead no facts showing that their supervisors or those imposing discipline had the requisite "specific intent" to interfere with their ERISA rights.

4. **Third**, the ERISA class action allegations should be dismissed or stricken under Rules 12(b)(6) and/or 12(f) for failure to plead facts sufficient to support a class action, and particularly because Plaintiffs effectively try to group together and include nearly all individual URR and GRC terminations over time, for any and all disciplinary reasons.

5. Because this Motion challenges subject matter jurisdiction, the Court may look outside of the Complaint and consider evidence submitted by the parties. *See, e.g., Malobabich v. Norfolk Southern Corp.*, No. 2:11-cv-112, 2011 WL 1791306, at \*1 (W.D. Pa. May 10, 2011) ("In determining whether subject-matter jurisdiction exists, the Court is not limited to the allegations of the Complaint. Rather, the Court may also consider extraneous evidence submitted by the parties.").

6. Accordingly, true and correct copies of the following documents are attached as exhibits to this Motion and are fully incorporated as if fully set forth herein: URR collective bargaining agreement (**Exhibit 1**); GRC collective bargaining agreement (**Exhibit 2**); URR demerit policy (**Exhibit 3**); GRC demerit policy (**Exhibit 4**); Prolenski's URR Record of Discipline (**Exhibit 5**); Prolenski's last chance agreement ("LCA") (**Exhibit 6**); Prolenski's LCA

Extension (**Exhibit 7**); URR's letter terminating Prolenski (**Exhibit 8**); Paceley's GRC Record of Discipline (**Exhibit 9**); and GRC's letter terminating Paceley (**Exhibit 10**).

7. Defendants have filed a Brief in Support of this Motion contemporaneously herewith, and they fully incorporate that Brief and its contents into this Motion.

WHEREFORE, for the reasons set forth above, and as more fully set forth in Defendants' accompanying Brief in Support, the Court should GRANT the foregoing Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(6), and/or 12(f) (alternate motion to strike), DISMISS all claims against all Defendants in their entirety, DISMISS and/or STRIKE all ERISA class action allegations as to all Defendants, and grant any other relief to Defendants as is just and proper. As this is Plaintiffs' third attempt at a complaint on the same issues, any dismissal made under Fed. R. Civ. P. 12(b)(6) should be WITH PREJUDICE.

Dated: July 7, 2023

Respectfully submitted,

/s/ Thomas M. Pohl

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and Union Railroad Company, LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on July 7, 2023, the foregoing DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT, inclusive of all exhibits, was electronically filed using the Court's CM/ECF system and was electronically served by that system upon all parties via their counsel of record.

/s/ Thomas M. Pohl

Thomas M. Pohl

*Counsel for Defendants*

*Transtar, LLC, Gary Railway Company, LLC,  
and Union Railroad Company, LLC*